Title IX Versus Canadian Human Rights Legislation: How the United States Should Learn from Canada's Human Rights Act in the Context of Sexual Harassment in Schools

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the OCR has only referred two cases to the Department of Justice for judicial enforcement, the EEOC has the power to file suit; in 2004, the EEOC filed 280 Title VII suits in court.\textsuperscript{171} This disparity is possibly due to the relative priorities of the political parties in office, or simply the greater perceived importance of eliminating sexual harassment in the workplace.\textsuperscript{172}

Because sexual harassment case law has effectively neutralized the promise of Title IX, "the victims whom it was intended to protect are being victimized a second time by the judicial system."\textsuperscript{173} Likewise, the poor performance of the OCR in actually enforcing and implementing Title IX in U.S. schools has further eroded the promise of discrimination-free learning environments.\textsuperscript{174} For these reasons, the United States should look to the Canadian model of civil rights legislation and enforcement for ideas about how to improve domestic judicial and administrative enforcement of Title IX.

III. Canada

A. The Problem in Canada

Culturally speaking, Canada is very similar to the United States, and, not surprisingly, also suffers from a high

total of 5,044 complaint receipts, 283 of which were sex-based. See Office for Civil Rights, Annual Report to Congress FY 2004, supra note 161.
172 This disparity seems embodied in the simple fact that almost everyone has heard of the EEOC, and almost no one has heard of the OCR. Drobac Interview, supra note 19. The relative ease in locating the EEOC website probably also helps it more easily disseminate information; it is located at simply www.eeoc.gov. In order to find the OCR website, one must wade through three Department of Education webpages. See www.ed.gov. Even if one finds the OCR website, its format is much more difficult to read and navigate than the EEOC site. See www.eeoc.gov and http://www.ed.gov/about/offices/list/oca/index.html.
173 Price, supra note 28, at 63.
174 See License for Bias, supra note 11.
federal HRA. The HRC is the Canadian equivalent of the various federal United States’ civil rights agencies, such as the EEOC and the OCR. Each province also has its own corresponding commission to administer that province’s human rights code. As stated by the federal Canadian HRC:

The Commission administers the Canadian HRA ... and ensures that the principles of equal opportunity and non-discrimination are followed in all areas of federal jurisdiction. This includes ... helping parties to resolve complaints of discrimination in employment, investigating complaints of discrimination, developing and conducting information programs to promote public understanding of the Act and the role and activities of the Commission.

When the federal Canadian HRA was passed, a special Human Rights Tribunal ("Tribunal") was also created to have sole jurisdiction over the judicial adjudication of human rights violation cases. The Tribunal’s mission is “[t]o provide Canadians with an improved quality of life and an assurance of equal access to the opportunities that exist in our society through the fair-minded and equitable interpretation and enforcement of the Canadian Human Rights Act.” The Tribunal receives its mandate and funding directly from Parliament and operates as an independent agency separate

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194 See Commission website, supra note 178.
195 See generally id.
197 Commission website, supra note 178.
199 Id. The Tribunal also interprets the Canadian Employment Equity Act. Referenced here is the federal Tribunal. Provincial tribunals operate in a similar manner; however, the laws and procedures for each province would need to be consulted to determine the intricate workings of the different provincial tribunals.
from the HRC.\textsuperscript{200} The Tribunal operates in a similar fashion to a court, but "as an administrative tribunal, the [Tribunal] has more flexibility than regular courts. This allows those who appear before it a chance to present their cases in more detail without having to follow strict rules of evidence."\textsuperscript{201} All cases are referred to the Tribunal through the HRC, which is the starting point for all human rights violation complaints.\textsuperscript{202} The HRC may decide to act as the victim's attorney (sometimes in a limited capacity) at a case before the tribunal; otherwise, the victim is required to represent himself or herself either without counsel or with the representation of an independent attorney.\textsuperscript{203} If one of the parties opposes the outcome of the case before the Tribunal, an appeal may be filed to the Canadian Federal Courts.\textsuperscript{204}

While the above explanation of the federal Tribunal is helpful in understanding how human rights tribunals are conducted in Canada, schools are covered under the provincial human rights codes.\textsuperscript{205} Thus, to lodge a complaint regarding sexual harassment in an educational setting, a Canadian complainant would work through a similar complaint process set up within his or her own province's human rights code.\textsuperscript{206} The scope of this article does not permit a recitation of how each province's complaint and resolution process works. However, the complaint process established by the Ontario Human Rights Commission ("Commission") will be discussed briefly to give an idea of how a typical school sexual harassment complaint would be lodged in Canada.

In order to lodge a complaint in Ontario, the complainant must first call a telephone hotline and speak with Commission staff to see if the alleged discrimination falls

\textsuperscript{200} \textit{Id.}
\textsuperscript{201} \textit{Id.}
\textsuperscript{202} \textit{Id.}
\textsuperscript{203} \textit{Id.}
\textsuperscript{204} \textit{Id.}
\textsuperscript{205} \textit{See supra} note 183.
\textsuperscript{206} \textit{Id.}

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under the Ontario Code. The complainant is then sent a form to complete, along with instructions regarding completion of that form. If the Commission accepts the complaint and then receives an answer from the respondent, it will attempt to settle the dispute through mediation with the parties. If mediation is unsuccessful, the Commission will conduct an investigation and enter into a binding conciliation process with the parties. If this proves unsuccessful, the Commission will decide whether to refer the matter to the Ontario Human Rights Tribunal. Unlike the federal Commission, the Ontario Commission is an impartial body; though it will present evidence from its investigation before the tribunal, it will not represent either party (even though each party is entitled to his or her own legal counsel).

D. The Evolution of Sexual Harassment Law in Canada

In Canada, as in the United States, sexual harassment is legally considered discrimination on the basis of sex. The Supreme Court of Canada established this holding in Janzen v. Platy Enterprises Ltd. In Janzen, the complainants were subjected to constant physical and verbal sexual abuse while

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208 Id.

209 Id. A complaint may not be accepted if it is untimely (occurring six months after the alleged incident(s)) or it is made in bad faith, is frivolous, not within the Commission’s jurisdiction, or could be better brought under another piece of litigation. Id. Complainants may file a reconsideration for commission decisions not to accept a complaint. Id.

210 Id.

211 Id. If the matter is not referred, either party may motion the Commission to reconsider that decision. Id.

212 Id.

213 See discussion of case law establishing this principle, infra Part III.D. This article will examine the evolution of sexual harassment law in Canada in both the workplace and in schools. Because all sexual harassment complaints fall under the human rights legislation, there is no parallel development of sexual harassment law in Canada based on different statutes, as exists in the United States. Id.

working as waitresses for the defendant; they consequently self-terminated their employment after complaints to their supervisor failed to ameliorate the situation.\textsuperscript{215} The Supreme Court of Canada decided the \textit{Janzen} case under the Canadian human rights laws shortly after the U.S. Supreme Court determined that sexual harassment is considered sexual discrimination under Title VII.\textsuperscript{216}

While the \textit{Janzen} decision represented a positive course for human rights advocates in Canada, it created confusion in the lower courts regarding the human rights tribunals’ exclusive jurisdiction over human rights cases.\textsuperscript{217} The Supreme Court of Canada clarified the human rights tribunals’ jurisdiction over sexual harassment cases in \textit{Board of Governors of Seneca College of Applied Arts and Technology v. Bhadaura},\textsuperscript{218} holding that violations of human rights legislation may not be brought as civil actions, but only under the jurisdiction of human rights tribunals.\textsuperscript{219} Therefore,

\textsuperscript{215} \textit{Id.}

I do not find this categorization particularly helpful. While the distinction may have been important to illustrate forcefully the range of behavior that constitutes harassment at a time before sexual harassment was widely viewed as actionable, in my view there is no longer any need to characterize harassment as one of these forms. The main point in allegations of sexual harassment is that unwelcome sexual conduct has invaded the workplace, irrespective of whether the consequences of the harassment included a denial of concrete employment rewards for refusing to participate in sexual activity.

\textsuperscript{217} See Chamberlain, \textit{supra} note 17, at 4. \textit{Chamberlain} notes that plaintiffs initially brought cases under civil tort law, in addition to human rights law.
\textit{Id.}
\textsuperscript{219} \textit{Id.}
in Canada, human rights cases only enter the traditional court system through appeal from a final tribunal decision.\footnote{See supra text accompanying note 204.}

Before examining sexual harassment discrimination under Human Rights Legislation in the context of schools, the Canadian courts first examined school board liability for discrimination of students based on race in \textit{Ross v. New Brunswick School District No. 15 and Attis}.\footnote{Ross v. New Brunswick School District No. 15 and Attis, [1996] S.C.R. 825.} In \textit{Ross}, the Supreme Court of Canada held that a school district has a duty to provide a discrimination-free learning environment and therefore may be held liable for discriminatory behavior (in this case racial discrimination) of a school employee.\footnote{Id.} In \textit{Ross}, the court found that when the school district failed to meaningfully discipline a racist teacher, it created a poisoned environment characterized by a lack of equity and tolerance.\footnote{Id.} The court further stated that "[a] school board has a duty to maintain a positive school environment for all persons served by it and it must be ever vigilant of anything that might interfere with this duty."\footnote{Id.} Likewise, the Canadian courts went on to find that a university could similarly be held liable for the sexual harassment of one of its students by a professor under the Newfoundland Human Rights Code.\footnote{Memorial University v. Rose [1990] 80 Nfld. & P.E.I.R. 97 (Nfld. S.C.T.D.).}

Perhaps the most prominent sexual harassment case in Canada presently is \textit{North Vancouver School District No. 44 v. Jubran}.\footnote{Vancouver School District No. 44 v. Jubran, [2005] B.C.J. No. 733.} This case was initially decided by the British Columbia Human Rights Tribunal, but was subsequently appealed to the British Columbia Court of Appeal.\footnote{Id.} As the case involves peer sexual harassment, albeit based upon sexual orientation, it has been styled by at least one Canadian
solicitor as the Canadian *Davis* test case for peer sexual harassment.\textsuperscript{228}

In *Jubran*, the victim filed a complaint with the British Columbia Human Rights Commission after he was repeatedly harassed, both physically and verbally, because his peers perceived him as a homosexual.\textsuperscript{229} In secondary school, from eighth grade to twelfth grade, Jubran was "taunted with homophobic epithets and was physically assaulted, including being spit upon, kicked and punched by other students."\textsuperscript{230} Even though the school recognized this behavior as harassment and disciplined a few of the perpetrators, it failed to effectively remedy the situation, as the harassment continued throughout Jubran's high school career.\textsuperscript{231}

The court, employing a broad interpretation of the British Columbia Human Rights Code, held that even though Jubran was not a homosexual, harassment that was homophobic in nature was discriminatory.\textsuperscript{232} The court ordered that the school district pay Jubran compensatory damages, in addition to ordering the school district to "cease its contravention of the Code and refrain from committing the same or similar contravention."\textsuperscript{233}

It is important to note that cases brought on a theory of sexual orientation harassment, such as *Jubran*, properly belong and are relevant to a discussion about gender-based

\textsuperscript{229} *Jubran*, B.C.J. No. 733 at 2.
\textsuperscript{230} *Id.* at 2, 10-16.
\textsuperscript{231} *Id.* at 17-19.
\textsuperscript{233} *Id.* at 23.
sexual harassment. Again, as is the case with gender-based sexual harassment, orientation-based harassment is not just the notion of "boys being boys." In fact, the Canadian HRA explicitly provides protection against discrimination based on sexual orientation. Both of these forms of harassment are

234 Just last year, in fact, one of the rare verdicts in a Title IX sexual harassment action (one of the two found under the Morelaw.com search, supra note 132) was brought under a peer sexual orientation-based harassment theory. See Theno v. Tonganoxie Unified Sch. Dist. No. 464, 394 F. Supp. 2d 1299 (Dist. Kan. 2005). A case was also brought under § 1983 for peer harassment based on sexual orientation that survived a summary judgment motion from defendants. See Flores v. Morgan Hill Unified Sch. Dist., 324 F.3d 1130 (9th Cir. 2003).

235 See generally Vanessa H. Eismann, Protecting the Kids in the Hall: Using Title IX to Stop Student-on-Student Anti-Gay Harassment, 15 BERKELEY WOMEN'S L.J. 125 (2000). Unfortunately, while a valid topic, a full discussion of sexual orientation-based harassment in the context of schools is beyond the scope of this article. However, it should also be noted that sexual harassment directed at males based on perceived homosexual orientation has as its basis harassment based on perceived feminine traits. Drobac interview, supra note 19. Thus, this particular kind of harassment is in a way closely related to traditional female sexual harassment. Id. The court's instructions in Theno are particularly enlightening on this point:

"Title IX prohibits discrimination 'on the basis of sex,' which means gender-based harassment. Harassment is not discrimination based on sex merely because the words or gestures used have sexual content or connotation or are based upon sexual orientation or perceived sexual orientation.

The harassment must be not merely tinged with offensive sexual connotations, but must actually constitute harassment based on gender. To constitute gender-based harassment under Title IX, the harasser must be motivated by Mr. Theno's gender or his failure to conform to stereotypical male characteristics. If you find that the harassers were so motivated, then you may conclude that the harassment was based on his gender.

Theno, 394 F. Supp. 2d at 1302.

236 See Canadian Human Rights Commission, Grounds for Discrimination and Harassment, available at http://www.chrc-ccdhp.ca/discrimination/sexual_orientation-en.asp (last visited Feb. 2, 2006). The provision was added to the HRA in 1996, nearly two decades after its addition was originally proposed. Id. Sexual orientation protection also exists at the
rooted in the harassers’ expression of power and control over their victim. While harassment based on sexual orientation, perceived or not, may not seem like regular gender-based sexual harassment, it certainly has the same deleterious effects on its victims.\textsuperscript{237}

\textit{E. The Benefits of the Placement of Sexual Harassment Discrimination under Human Rights Legislation in Canada}

The Canadian Supreme Court’s holding in \textit{Bhadauria} squarely placed sexual harassment cases under the jurisdiction of human rights tribunals rather than the private civil litigation sphere.\textsuperscript{238} According to Erika Chamberlain, professor of law at University of Western Ontario, this categorization has created a tension concerning the proper jurisdictional home for sexual

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\textsuperscript{237} The court in \textit{Jubran} recognized the negative effects of this particular kind of harassment above and beyond mere bullying. \textit{Jubran}, B.C.J. No. 733. Referring to the Tribunal’s finding that harassment based on perceived homosexuality was discrimination based on sexual orientation the court stated:

While the students may have used the terms ‘homo’ and ‘queer’ interchangeably with ‘dork’ or ‘geek,’ without reference to sexual orientation, the terms ‘queer,’ ‘homo,’ and ‘faggot’ clearly carry homosexual overtones. The students acknowledged that the words often related to sexual orientation, were pejorative, and were intended to carry a sting. While not every action directed toward Mr. Jubran was accompanied by a homosexual statement or epithet, I agree with Mr. Jubran’s counsel, who argued that, for the most part, the name-calling had ‘at its basis a sense of his difference which was described frequently in homophobic terms.’ Whether or not the name-calling was intended to hurt is irrelevant, since it is the effect of the conduct, or action, not the intent of the harassers, that is relevant in determining whether discrimination has occurred. \textit{Ontario Human Rights Commission v. Simpson-Sears Ltd.}, [1985] 2 S.C.R. 536. \textit{Id.} at 3.

\end{flushright}
harassment cases.\textsuperscript{239} Chamberlain argues that tension is created because sexual harassment encompasses elements of both distributive and corrective justice.\textsuperscript{240} Chamberlain finds that the "former views sexual harassment as an issue of sexual equality, properly addressed by the human rights system with its public process and broad remedial powers."\textsuperscript{241} "The latter describes it as a private injury that should be litigated through the adversarial system and compensated by damages."\textsuperscript{242}

Ultimately, Chamberlain finds that sexual harassment cannot completely fit neatly into either a distributive or corrective justice theory. However, she does conclude that sexual harassment properly belongs under the distributive theory because, even if it cannot afford victims the same level of compensation as the private civil tort system, the human rights tribunals have broader remedies available to them than at common law.\textsuperscript{243} These remedies, including education and affirmative action programs, help redress the historical harm that sex stereotypes have caused; they also help improve the situation of women and those facing sexual orientation discrimination in general.\textsuperscript{244}

Furthermore, while tribunals have the authority to order compensatory damages awards, the major focus of tribunal remedies is on the use of broad remedial powers to remove discriminatory environments and prevent future harm.\textsuperscript{245} As evidenced in the Nova Scotia Human Rights Act, a board of inquiry can order "any party who has contravened this Act to do any act or thing that constitutes full compliance with the Act and to rectify any injury caused to any person or class of person or make compensation therefore."\textsuperscript{246} For example, in ordering the school to "cease its contravention" of

\textsuperscript{239} Chamberlain, supra note 17, at 3.
\textsuperscript{240} Id.
\textsuperscript{241} Id.
\textsuperscript{242} Id. at 4.
\textsuperscript{243} Id. at 20.
\textsuperscript{244} Id.
\textsuperscript{245} Chamberlain, supra note 17, at 19.
\textsuperscript{246} Nova Scotia Human Rights Act, R.S.N.S. 1989, c. 214, s. 34(8), as amended by S.N.S. 1991, c. 12.
the act, the Jubran Tribunal set up a monitoring program with the school and the British Columbia Human Rights Commission.\(^{247}\)

Additionally, in recognizing the sensitive nature of many discrimination complaints, human rights tribunals are more flexible and informal in their proceedings than regular courts.\(^{248}\) This aspect of the proceedings assists those bringing sexual harassment claims in general, and may in particular be of assistance to younger students bringing a complaint, who may be more intimidated by a full court proceeding.\(^{249}\) In sum, human rights tribunals have procedures in place that allow them to better handle discrimination and harassment complaints.

**IV. Comparison of Canadian and American Systems**

**A. Administrative Enforcement**

While the American OCR and the Canadian Commissions perform similar functions in administratively enforcing anti-sexual harassment discrimination laws in schools, the Canadian Commissions are organized in a more logical and efficient manner. While the American system has several different agencies that enforce civil rights legislation in different contexts,\(^{250}\) the Canadian human rights commissions bring all discrimination complaints under one umbrella, either in the provincial or the federal system.\(^{251}\) This system arguably makes it easier for victims of discrimination

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\(^{248}\) See Human Rights Tribunal website, *supra* note 198.

\(^{249}\) *See generally id.*

\(^{250}\) For example, at the federal level the EEOC enforces Title VII in the workplace (see [www.eeoc.gov](http://www.eeoc.gov)); HUD’s Office of Fair Housing and Equal Opportunity enforces the Fair Housing Act (see [http://www hud.gov/offices/fheo/index.cfm](http://www.hud.gov/offices/fheo/index.cfm)); and the OCR enforces Titles VI and IX in education (see *supra* Part II.D). States also have their own anti-discrimination agencies. See, e.g., Indiana Civil Rights Commission, [http://www.in.gov/icrc/](http://www.in.gov/icrc/). If you are a victim in the United States, unless you are an expert, it seems unlikely that you would know where to file your complaint without at least some preliminary research.

\(^{251}\) *See supra* Part III.C.
to know where to file a complaint, as there is only one agency involved regardless of the context of the discrimination. Moreover, whereas the different anti-discrimination agencies of the United States are at the whim of the priorities of the political groups in office, Canadian commissions, which are organized into one anti-discrimination enforcement group, may wield more combined power in achieving their goals.\textsuperscript{252} This concept is evidenced by the noticeable disparity in the name recognition value and power wielded between the EEOC and the OCR, even though each agency was created to combat the same evil, only in different settings.\textsuperscript{253}

\textbf{B. Judicial Enforcement}

In the United States, students may bring suit to recover damages and injunctive relief under Title IX for sexual harassment suffered in schools.\textsuperscript{254} However, many victims are arguably deterred from filing claims because either the standard of recovery for damages is extremely high or the standard of recovery for injunctive relief has not clearly been articulated.\textsuperscript{255} Alternatively, in Canada, civil human rights suits do not exist because Canadians address human rights complaints in special human rights tribunals, which are a completely separate system from normal civil litigation.\textsuperscript{256} Thus, the human rights tribunals, though impartial, are in a particularly good position to properly adjudicate discrimination complaints because their sole jurisdiction and experience is in human rights law.\textsuperscript{257}

Furthermore, student sexual harassment complainants may not be as inhibited from filing suits in Canada because the standard for recovery against a school board in a tribunal setting is less onerous. Specifically, a Canadian complainant

\textsuperscript{252} Droback interview, supra note 19.
\textsuperscript{253} See discussion of the EEOC and OCR supra Part II.D.
\textsuperscript{254} See supra, Part II.B.
\textsuperscript{255} See, generally, Gebser v. Lago, 524 U.S. 274 (1998) (Stevens, J., dissenting); Rhode, supra note 1.
\textsuperscript{256} See Canadian Human Rights Tribunal website, supra note 198.
\textsuperscript{257} See Chamberlain, supra note 17.
must show that the school board failed to provide an educational environment that was free from discriminatory harassment. 258 If this legal standard is met, both injunctive and compensatory relief may be granted. 259 In addition, Canadian complainants do not have to choose whether to file a civil action or an administrative complaint; the system is streamlined to funnel all complaints through the Commission for administrative remedy or resolution at a tribunal. 260 Thus, complainants are not forced to make some kind of strategic decision regarding how they will proceed with their complaint.

V. Conclusion and Recommendation

Even though Title IX has had more than 30 years to eliminate discrimination on the basis of sex in America’s schools, 261 the present system in the United States offers students who suffer in-school sexual harassment little recourse if their school has no sexual harassment grievance policy in place, or if that policy is ineffective. 262 While the Supreme Court decisions in Gebser and Davis were progressive in recognizing that recovery is available in both student-teacher and student-student sexual harassment situations, the legal standards of recovery established by those cases detract from other possible remedies that might better effectuate the goals of Title IX. 263 Likewise, while the OCR is in a position to enforce the implementation of Title IX sexual harassment compliance, it has largely failed to do so. 264 Thus, sexual harassment continues to exist at high levels in American schools because Title IX has been emasculated by poor administrative and confusing judicial enforcement. 265

258 Jabran, B.C.I. No. 733 at 2; see also Ross, 1 S.C.R. 825.
259 See Chamberlain, supra note 17, at 19.
260 Remember that in the United States, victims may choose either to file a complaint with the OCR, file a civil suit, or both. See supra Part II.D.
261 Title IX was enacted as part of the Education Amendments of 1972. See 20 U.S.C. § 1681(a) et seq. (1972).
262 See License for Bias, supra note 11.
263 Drobac interview, supra note 19.
264 See License for Bias, supra note 11.
265 Drobac interview, supra note 19.
In fixing this problem, the United States should look to the Canadian Human Rights system of anti-discrimination enforcement. The United States should streamline its numerous anti-discrimination agencies, thereby enabling them to more proficiently resolve harm and eliminate discrimination. While President George W. Bush recognized that federal agencies in the business of national security and law enforcement belong under one organizational umbrella, an analogous push has never been made to bring together the agencies that enforce civil rights laws.

The United States legislature and/or courts should also articulate a less rigorous standard of recovery under Title IX for sexual harassment plaintiffs seeking injunctive or declaratory relief. The present direction of the case law, where focus is almost entirely placed on seeking compensatory damages, muddies the issue. While it is important to compensate victims, it is arguably more important to hold schools accountable for Title IX requirements. Unfortunately, under the present system, where the spotlight is on judicially preventing financial liability and therefore protecting the school board purse, school boards are under little pressure to enact Title IX sexual harassment reporting, education, and grievance policies.

In sum, a clearly articulated reasonableness or negligence standard for injunctive relief against school boards would allow a plaintiff to more easily and quickly force his or her school into compliance.

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266 Id.
268 Drobac interview, supra note 19.
269 Id.
270 Id.
271 See, generally, Rhode, supra note 1.
272 Drobac interview, supra note 19.
rate of sexual harassment in its schools.\textsuperscript{175} For example, in a study conducted in Ontario secondary schools, a reported 80% of female students had been sexually harassed.\textsuperscript{176} However, Canada’s system of human rights legislation for resolving anti-discrimination violations, such as sexual harassment, operates differently than the civil rights legislation system in the United States.\textsuperscript{177}

\textbf{B. The Operation of Human Rights Legislation in Canada}

In Canada, sexual harassment is considered discrimination on the basis of sex under human rights legislation passed by the Canadian parliament in 1977.\textsuperscript{178} The resulting Canadian Human Rights Act (HRA) has as its purpose “that people should not be placed at a disadvantage simply because of their age, sex, race, or any other ground covered by the Act.”\textsuperscript{179} The legislation was passed “to ensure equality of opportunity and freedom from discrimination in federal jurisdiction.”\textsuperscript{180}

Canadian human rights legislation functions differently than civil rights legislation in the United States. For example, in the United States, one may bring a workplace sexual harassment claim under the federal Title VII cause of action whether it arises in the public (local, state, or federal) or private sector.\textsuperscript{181} In Canada, however, human rights legislation operates at both the federal and provincial levels, each having

\textsuperscript{175} Toronto, Ontario Secondary School Teacher’s Federation, \textit{The Joke’s Over – Student to Student Sexual Harassment in Secondary Schools} (1995) at 3.
\textsuperscript{176} \textit{Id.}
\textsuperscript{177} \textit{See infra} Part III.B for a discussion of Canadian human rights system.
\textsuperscript{179} \textit{Id.}
\textsuperscript{180} \textit{Id.}
\textsuperscript{181} \textit{See, e.g., Meritor Sav. Bank, FS v. Vinson, 477 U.S. 57, 57} (1986), where the plaintiff sued her private employer under Title VII.
separate jurisdiction over the cases that arise therefrom.\textsuperscript{182} The Canadian HRA only applies to individuals working for either the federal government or a private company regulated by the federal government.\textsuperscript{183} It also applies to anyone who receives goods and services from any of those sectors.\textsuperscript{184} Similarly, each province has its own human rights law, usually called a code or an act (or, in Quebec, a charter), that covers other types of organizations not included under federal legislation.\textsuperscript{185} For instance, schools, retail stores, restaurants, and most factories are covered by provincial human rights law, as are provincial governments themselves.\textsuperscript{186}

Unlike the broadly differing views in the United States regarding the proper Congressional intent and interpretation of American civil rights legislation,\textsuperscript{187} Canadian judicial decisions have firmly established a broad interpretation of human rights legislation.\textsuperscript{188} The reasoning behind this broad application may lie in the constitutional or quasi-constitutional nature of the legislation. For example, in the case of \textit{Ontario Human Rights Commission and O'Malley v. Simpson-Sears}

\begin{footnotesize}
\begin{enumerate}
\item United Nations Association in Canada, Canada and Human Rights Website, \url{http://unnc.org/rights/actguide/canada.html} (last visited Oct. 11, 2005) [hereinafter Canada and Human Rights website].
\item \textit{Id.} See Commission website, \textit{supra} note 178, for a detailed list of entities governed by the federal HRA. Thus, cases against schools would fall under the jurisdiction of provincial human rights laws. \textit{Id.}
\item \textit{See} Canada and Human Rights website, \textit{supra} note 182.
\item \textit{Id.} See, \textit{e.g.}, Ontario Human Rights Code, R.S.O. 1990, c. H.19. Each province, in addition to the federal Canadian government, also operates a website that, in general, explains in layperson terms the individual Human Rights Codes, the rights governed by them, and how to lodge an individual complaint if rights have been violated. \textit{See}, \textit{e.g.}, The Ontario Human Rights Commission website, \textit{at} \url{http://www.ohrc.on.ca/english/code/index.shtml} (last visited Feb. 3, 2006).
\item \textit{See} Canada and Human Rights website, \textit{supra} note 182.
\item For differing views on the construction of protections offered under civil rights law (specifically Title IX) in the United States, one only need look to the majority and dissent decisions in \textit{Gebser}, 524 U.S. 274 or \textit{Davis v. Monroe County Bd. of Ed.}, 526 U.S. 629 (1999).
\end{enumerate}
\end{footnotesize}
Justice McIntyre of the Canadian Supreme Court stated:

It is not, in my view, a sound approach to say that according to established rules of construction no broader meaning can be given to the Code than the narrowest interpretation of the words employed. The accepted rules of construction are flexible enough to enable the Court to recognize in the construction of a human rights code the special nature and purposes of the enactment ... and to give it an interpretation which will advance its broad purposes. Legislation of this type is of a special nature, not quite constitutional but certainly more than the ordinary – and it is for the courts to seek out its purpose and give it effect.\[190\]

C. Canadian Administrative and Judicial Enforcement of Human Rights Legislation.

When federal and provincial Canadian human rights legislation was created, special administrative commissions were also created at both the federal and provincial levels to administer and enforce the acts.\[191\] These human rights commissions bridge the gap between constitutional human rights theory\[192\] and application by establishing practical steps and legal channels for solving human rights violations.\[193\] The Canadian Human Rights Commission (HRC) administers the

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\[190\] Id. See also Gould v. Yukon Order of Pioneers, [1996] S.C.R. 571 (“this Court has repeatedly stressed that it is inappropriate to solely rely on a strictly grammatical analysis, particularly with respect to the interpretation of legislation which is constitutional or quasi-constitutional in nature”).

\[191\] See United Nations Association in Canada, Canada and Human Rights website, supra note 182.


\[193\] See Canada and Human Rights website, supra note 182.